



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

JUAN P. SAN NICOLAS,

Employee,

vs.

GUAM FIRE DEPARTMENT,

Management.

GRIEVANCE APPEAL
CASE NO.: 17-GRE04

JUDGMENT OF
DISMISSAL WITHOUT
PREJUDICE

This matter came before the Civil Service Commission on June 22, 2017, for hearing on motions. Present were Assistant Attorney General David J. Highsmith and Acting Fire Chief Daren D. Burier, representing Management, and the Employee, Juan P. San Nicolas, and his attorney, Jacqueline Taitano Terlaje. The Commission raised the question of jurisdiction *sua sponte*, and then voted 4-0 to dismiss the case.

“[T]he CSC is not a court of general jurisdiction but rather a tribunal established pursuant to the Organic Act, 48 U.S.C. § 1421 *et seq.*, to administer the Government of Guam’s merit system. . . .” *In re Department of Agriculture v. Civil Service Comm’n (Rojas)*, 2009 Guam 19 ¶ 29. As an administrative tribunal, the jurisdictional power to hear cases of a given nature is specified by the legislature. Title 4 of the GCA § 4403(c) grants the CSC power to hear

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1 “grievance complaints. . . of an employee from the classified service if such right of appeal to the
2 Commission is established in the personnel rules governing the employee.”

3 The personnel rules governing Employee San Nicolas are the Department of
4 Administration Personnel Rules and Regulations (“DOAPRR”). Under the DOAPRR, prior to
5 appealing to the CSC (which is Step 5 of the process), the employee must submit their grievance
6 for hearing by a Grievance Review Board (“GRB”) which is Step 4 of the process. In theory, the
7 GRB as Step 4 of the process should be completed before Step 5 invokes an appeal to the CSC;
8 however, an exception is provided. Where “the Grievance Review Board failed to render a
9 decision within 30 calendar days of the submission of the grievance at the Step 4 level,” one can
10 move ahead to Step 5. DOAPRR Rule 12.901(3).

11 The procedural facts are not in dispute. Employee San Nicolas submitted Step 4 of his
12 grievance on March 3, 2017. On March 27, 2017, San Nicolas filed his appeal with the CSC.
13 Clearly, the required 30 calendar days had not transpired before filing.

14 San Nicolas maintains that on March 17, 2017, he was informed that the GRB for his
15 grievance submission would not occur within the 30 calendar days. He argues that the March
16 17th statement his GRB would not occur in a timely manner is sufficient to accelerate the 30
17 calendar days provided in DOAPRR 12.901(3) and allow him to file before they expired. We
18 disagree.

19 Rule 12.901 lists seven (7) methods by which an employee is entitled to present a
20 grievance appeal to the CSC. Being informed that the GRB would not meet in a timely manner

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1 is not one of them. We are not inclined to read an additional exception into what is already an
2 exhaustive list. San Nicolas has not explicated any irreparable harm that would have been
3 suffered had he merely waited an additional week to file per the existing rule. Furthermore,
4 adoption of this proposed exception opens the door to further litigation over what constitutes
5 sufficient notice that a GRB will not be held. Yet, even if the Fire Chief himself issued a
6 notarized statement that a GRB would not be held in the next week, it is still possible that events
7 could change and a GRB would be convened. There is no reason an employee cannot wait a full
8 30 calendar days before bypassing the GRB.


9 We appreciate the benefits of having a GRB held. We would prefer that all grievances
10 come to us after a GRB had already been convened. We have no interest in creating exceptions
11 that truncate the time further. That said, it should be clear that we do not remand this case back
12 for a GRB. While we would strongly prefer that one occur, if it has not then the 30 days
13 provided in Rule 12.901(3) have elapsed and San Nicolas can refile.

14 SO ADJUDGED THIS 13th day of July, 2017.

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17 **EDITH PANGELINAN**
18 **Chairperson**

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16 _____
17 **LOURDES HONGYEE**
18 **Vice-Chairperson**

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19 _____
20 **PRISCILLA T. TUNCAP**
21 **Commissioner**

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19 _____
20 **JOHN SMITH**
21 **Commissioner**

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21 _____
22 **CATHERINE GAYLE**
23 **Commissioner**

20 NOT PRESENT
21 _____
22 **MICHAEL G. TOPASNA**
23 **Commissioner**

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